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Row 3: One LLP, 4000 MacArthur Blvd., East Tower, Suite 500, Newport Beach, CA 92660, [Empty]
Row 4: [Empty], [Empty], [Empty], EXAMINER, [Empty]
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN CAVANAGH

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Appeal 2016-000207  
Application 13/663,313  
Technology Center 3600

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Before HUBERT C. LORIN, NINA L. MEDLOCK, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's Rejection of claims 1–16. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We REVERSE.

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<sup>1</sup> Appellant identifies SnapFence LLC as the real party in interest. Appeal Br. 3.

## THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A snap together fence system comprising:

(a) a hollow elongated member formed of extruded plastic material and defining grooves on an external surface thereof;

(b) a straight rail to post connector formed of injection molded plastic material, said straight rail to post connector including:

(1) a first generally U shaped member having arms interconnected by a bight,

(2) a first adapter plug extending outwardly from the bight of said first U shaped member and away from the arms of said first U shaped member;

(c) a corner rail to post connector formed of injection molded plastic material, said corner rail to post connector including:

(1) a second generally U shaped member having arms interconnected by a bight,

(2) a second adapter plug extending outwardly from the bight of said second U shaped member, and away from the arms of said second U shaped member, and

(3) a third adapter plug extending outwardly from an outer surface of one of the arms of said second U shape member; and

(d) said hollow elongated member when forming a post being adapted to receive said adapter plugs of the connectors therein, and also being adapted to receive said adapter plugs on said connectors therein to form rails, said arms on said connectors being adapted to receive said elongated members therebetween.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Schultz et al. ("Schultz")	US 4,951,925	Aug. 28, 1990
Heins	US 2002/0185640 A1	Dec. 12, 2002
Cook et al. ("Cook")	US 6,935,623 B2	Aug. 30, 2005
Tamez et al. ("Tamez")	US 2006/0202184 A1	Sept. 14, 2006
Froese	US 7,398,961 B2	July 15, 2008

The following rejections are before us for review:

1. Claims 1, 2, 4–7, 13, and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heins and Schultz.
2. Claims 3 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heins, Schultz, and Cook.
3. Claims 8, 10, 11, and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heins, Schultz, and Froese.
4. Claims 12 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Heins, Schultz, and Tamez.

### ANALYSIS

Independent claim 1 includes the limitations:

- (c) a corner rail to post connector formed of injection molded plastic material, said corner rail to post connector including:
  - (1) a second generally U shaped member having arms interconnected by a bight,

(2) a second adapter plug extending outwardly from the bight of said second U shaped member, and away from the arms of said second U shaped member, and

(3) a third adapter plug extending outwardly from an outer surface of one of the arms of said second U shape member;

Appeal Br. 11, Claims Appendix.

The Examiner finds the above limitations disclosed in Figure 7 of Schultz (Ans. 4–5, 10–12). At page 10 of the Answer, the Examiner provides an annotated version of Figure 7 of Schultz showing the Examiner’s findings for the above claim limitations. In particular, the Examiner finds the claimed “arms interconnected by a bight” in sleeve 22, and finds the claimed “second adapter plug” and “third adapter plug” in the two pairs of flanges 24 projecting from adjacent walls of sleeve 22.

The Appellant disputes this finding. Appeal Br. 8–10; *see also* Reply Br. 3.

We agree with the Appellant that the cited portions of Schultz do not disclose the above limitations. We fail to see, and the Examiner has not adequately explained, how sleeve 22 comprises “arms interconnected by a bight.” Schultz discloses that sleeve 22 is “a hollow, vertical, post-receiving sleeve 22, open on its upper and lower ends to slide over a post” and “has an internal configuration matching that of the post, here shown to be rectangular with four sidewalls” (Schultz col. 3, ll. 10–14). The Examiner has not explained why two of the four identical sidewalls of rectangular sleeve 22 are equivalent to “arms,” or why a third sidewall is equivalent to a “bight.” Consequently, we also do not see how Figure 7 of Schultz discloses “a third adapter plug extending outwardly from an outer surface of one of the arms” as required by claim 1. Flanges 24 extend directly from the walls

of sleeve 22 (Schultz col. 3, ll. 28–30) (“sleeve 22 has flange members 24 integrally extending from only one wall of the sleeve.”). Thus, flanges 24 of Schultz do not extend “outwardly from an outer surface of one of the arms” as required by claim 1.

Independent claims 6 and 16 contain a similar limitation as claim 1, and the Examiner relies on the same deficient finding discussed above in rejecting these claims under 35 U.S.C. § 103(a). See Ans. 2–5.

A prima facie case of obviousness has not been made out in the first instance by a preponderance of the evidence. Accordingly, we reverse the rejection of independent claims 6 and 16 for the same reasons. For the same reasons, we also do not sustain the rejection of dependent claims 2–5 and 7–15. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

#### CONCLUSION

The Appellant has shown that the Examiner erred in rejecting claims 1–16 under 35 U.S.C. § 103(a).

#### DECISION

The Examiner’s rejections under 35 U.S.C. § 103(a) are reversed.

REVERSED